Editor's note: Appealed -- aff'd, Civ. No. S-2768 (E.D.Cal. Dec. 5, 1973)

ELSIE V. FARINGTON

IBLA 71-61 Decided January 29, 1973

Appeal from decision (Sacramento 3838) by Sacramento Land Office, Bureau of Land Management, rejecting color of title application.

Affirmed as modified.

Res Judicata

Where the Department has acted within its jurisdiction and review of such action has not been sought on a timely basis, the principle of res judicata in its administrative law counterpart -- the doctrine of finality of administrative action -- is operative to bar a claim for relief.

Color or Claim of Title: Generally

A color of title application is properly rejected where the instrument of conveyance upon which the applicant bases his claim does not describe the land conveyed with any reasonable degree of specificity.

Hearings

Where on appeal the dispositive issues are issues of law rather than fact, a request for a hearing under 43 CFR 4.415 will be denied.

APPEARANCES: Gray, Hewitt and Lenhard by Robert C. Lenhard, Esq., Marysville, California, and Robert Edmondson, Esq., San Francisco, California, for appellant.

OPINION BY MR. GOSS

Elsie V. Farington has appealed from a decision of the Sacramento Land Office, Bureau of Land Management, dated September 8, 1970, which rejected her class 1 and class 2 color of title application (Sacramento 3838) filed pursuant to the Act of December 22, 1928, as amended, 43 U.S.C. §§ 1068, 1068a, 1068b (1970). The application was rejected because neither "the showing furnished by the claimant concerning the occupancy under class 1, nor the evidence of tax payments under class 2 which has been submitted by the claimant, are considered

constituting a holding of land under a claim or color of title in good faith as contemplated and required by the Color of Title Act."

The Color of Title Act, supra, authorizes issuance of a patent to land held "in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years," where either (1) valuable improvements have been placed on the land or it has been cultivated in part, or (2) State and local taxes levied on it have been paid for the period "commencing not later than January 1, 1901, to the date of application." Under the governing regulations claims of the first type depending on cultivation or improvement of land held twenty years are described as class 1 claims, and claims of the latter type requiring the showing of the payment of taxes levied for the period prescribed are designated as class 2 claims. 43 CFR 2540.0-5(b) (1972) formerly 43 CFR 2214.1-1(b) (1970).

The essential facts as gleaned from the record are briefly these: Appellant filed this application under both class 1 and class 2 on June 19, 1970, for a portion of secs. 3 and 10 in T. 20 N., R. 9 E., M.D.M., California, embracing approximately 160 acres located within the Plumas National Forest. She traces the origin of her title to her grandfather, Thomas Lewis, who purchased one-half interest in a ranch containing 120 acres more or less, situated in Sears Township, Sierra County, California, from Levi Kinman, July 21, 1875, and one-half interest of a ranch of the same description from William Buchanan, August 11, 1875. 1/ Thomas Lewis conveyed the Lewis Ranch containing 120 acres more or less to his daughter, Elizabeth Ann Marvin, February 11, 1905. Elizabeth Ann Marvin under the married name of Elizabeth Reid conveyed "all that real property situated in County of Sierra, State of California, bounded and described as follows: Lot East of Mount Pleasant" to Elsie Farrington September 24, 1937. Appellant claims ownership for the applied-for land based on this conveyance and asserts that members of her family have occupied what has been known as both the Lewis and the Marvin ranch since her grandfather's original acquisition in 1875.

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1/ There is no indication in the record when or how Kinman and Buchanan acquired their interests in the ranch they conveyed to Lewis. The first instrument of record affecting approximately the same land as the ranch conveyed to Lewis was a preemption notice filed by Levi and John Counts pursuant to a California Settlers' law of April 20, 1852. This notice, dated May 19, 1855, stated that it was for grazing and agricultural purposes and did not embrace more than 320 acres. The notice acknowledged that the act under which they filed was merely a mode of maintaining and defending possessory actions.

Appellant asserts in her application that her family has placed valuable improvements on the land (estimated value $11,500) and that 25-50 acres were cultivated from 1876 to 1948 and occasionally since then. She indicates that she first learned that she did not have clear title to the land in 1959 when the Yuba County Title Guarantee Company examined the title to the applied-for lands.

She asserts good faith possession, relying on the fact that she was born and raised on the Marvin Ranch and therefore had no reason to believe the land was not owned by her family. In addition, she submits evidence showing that she and her predecessors have paid taxes on the ranch as assessed by Sierra County since 1877.

The decision appealed from is based on a lack of good faith within the meaning of the Act. Reviewing grazing permits issued to appellant and members of her family from 1913 through 1936 for land now included in her application, the Land Office found nothing in the grazing records indicating that the permittees considered this grazing area their own patented land. The decision stated "if Messrs. Marvin and Reid, and Mrs. Farrington believed they owned the land, it does not seem likely that they would have obtained grazing permits covering the land they believed they owned."

The decision also questioned the good faith of appellant and her predecessors as to the class 2 claim because the county tax records in 1886 show taxes were paid for possessory interests only, and there is nothing on the record to indicate how the possessory interest later ripened into a fee interest. Further, the decision points to the conveyance under which appellant took her title from Elizabeth Reid, emphasizing that the deed contained no acreage or ties.

Appellant asserts on appeal that the Land Office misconstrued the effect of the grazing records. She disclaims any knowledge of the defects in her chain of title or that the cited grazing permits may have included lands within her application. Appellant contends that the decision should be reversed and a patent granted in this case because she has satisfied all the elements for both class 1 and class 2 under the Color of Title Act, supra.

First, as to appellant's class 1 claim, the record shows that she filed a previous class 1 application (Sacramento 072481) on August 20, 1962, claiming the same land on the basis that her ancestors had placed valuable improvements on the land and that she had cultivated 40-50 acres from 1938 to 1962. That application was rejected by a land office decision of January 18, 1963, because: (1) the land had been grazed by applicant's predecessors under permit for over 50 years, an indication of applicant's failure to

exhibit good faith within the meaning of the Color of Title Act, supra; (2) the improvements were very old, deteriorated and of little value; and (3) cultivation had been limited to a small garden. When appellant failed to take an appeal of that decision to the Director of the Bureau of Land Management, the Land Office decision became the final administrative ruling of the Department as to appellant's class 1 claim, and the case was closed on the records, March 5, 1963.

With this latest application appellant seeks to renew her class 1 claim based on the same facts submitted to the Land Office in 1962. Appellant apparently felt no compelling reason to challenge the Land Office ruling, waiting seven years to file a second application. Since appellant has already received a final adjudication on the merits of her class 1 claim, we do not deem it appropriate to reopen consideration of that prior determination. It is well established that where the Department has acted within its jurisdiction and review of such action has not been sought on a timely basis, the principle of res judicata -- in its administrative law counterpart, the doctrine of finality of administrative action -- is operative to bar a claim for relief. Gabbs Exploration Co., 67 I.D. 160 (1960), aff'd in Gabbs Exploration Co. v. Udall, 315 F.2d 37 (D.C. Cir. 1963), cert. den. 375 U.S. 822 (1963).

We therefore limit our consideration to the class 2 claim. The purpose of the Color of Title Act, supra, is to provide a method whereby a citizen, relying in good faith upon a title or claim of title derived from some source other than the Government, may acquire a valid title to the land. Minnie E. Wharton, et al., 4 IBLA 287, 79 I.D. 6 (1972). For either a class 1 or class 2 claim, the mere possession of and claim to public land are not enough in the absence of the color of title required by the statute. Occupation of the land must be founded on some reasonable basis of belief that the land is held in good faith under a valid title. Thomas Ormachea, A-30092 (May 8, 1964). Holding land under color of title has been construed to require a claim based on an instrument purporting to convey title to the land sought. Minnie E. Wharton, et al., supra. In this respect, the federal statute is fundamentally different from the California law of prescriptive right between private parties.

Res judicata, of course, determines the issue of good faith. Aside from the question of the use of federal lands under grazing permit, which the Land Office relied upon as a basis for rejection, we find that a fundamental deficiency in appellant's conveyancing documents is also dispositive of her application. There is an obvious lack of certainty as to what land was included within the ranch.

To be effective as color of title, the instrument relied upon must purport to convey the land involved and must include a legally sufficient description. If the description does not identify the

land with the degree of certainty essential to ascertain the boundaries and identity of the land, the instrument is insufficient. The Department has adhered to this basic requirement. Nora Beatrice Kelley Howerton, 71 I.D. 429 (1964). See also Karvonen v. Dyer, 261 F.2d 671 (9th Cir. 1958); 3 Am. Jur. 2d, Adverse Possession, Sec. 108 (1962).

The conveyance, dated September 24, 1937, offered by the appellant as the basis for her claim, does not describe with a reasonable degree of specificity the land described in her application. The deed from Elizabeth Reid to Elsie Farington merely includes a general description of "All that real property situated in the County of Sierra, State of California, bounded and described as follows: Lot East of Mount Pleasant together with the tenements, hereditaments and appurtenances thereunto belonging or in anywise pertaining." The record contains no reference to any map which identifies such a lot, and the description is ineffective to convey a specific parcel of land. From the description there is no way one could determine the extent of what was conveyed, or where it is located on the ground. A somewhat similar problem exists in connection with the chain of title from Thomas Lewis to Elizabeth Ann Marvin, dated February 11, 1905. 2/ It is in large part due to the inadequacies of descriptions in the conveyances affecting the applied-for land, dating back to 1905, that it is now most difficult to determine whether there was an overlapping of the Marvin asserted ranch area and the areas included in grazing permits from 1913 to 1938.

In addition, there is a wide variance as to the exact amount of acreage involved in the Marvin ranch. The acreage in appellant's application (160 acres) does not coincide with (1) the acreage taxed by Sierra County (approximately 210 acres), (2) the acreage conveyed to appellant's mother, Elizabeth Ann Marvin (120 acres more or less), and (3) the original preemption notice of Levi and John Counts (not more than 320 acres). Appellant offers no explanation of how her

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2 / The description in this deed introduced the added unknown of the undescribed "Poor Boy Consolidated Mining Claim" as follows:

"* * * all that certain Lewis Ranch and interest in Poor Boy Consolidated Mining Claim, situated in the Mt. Pleasant bounded and described as follows, to wit: That certain Lewis Ranch containing one hundred twenty (120) acres more or less about three (3) miles from the town of Scales, California, on the North bank of Canyon Creek, and east from Mt. Pleasant Ranch, together with all the water rights thereon also an undivided one twelfth (1/12) interest in and to the Poor Boy Consolidated Placer Mine, situated about three (3) miles from the town of Scales, California, and North East of the Hardscrabble Mining Claim and on the north side of Canyon Creek. * * *"

claim has been enlarged to 160 acres when there is a conveyance in the immediate chain of title to her mother which is limited to 120 acres. The lack of identification as to the land involved prevents a clarification of the acreage differences. Because of the vagueness and lack of proper description with which to identify the land the instruments purport to convey, appellant's chain of title is insufficient as a basis for a valid color of title claim.

The dispositive issues herein being issues of law rather than fact, the request for a hearing is denied. 43 CFR 4.415.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

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Joseph W. Goss, Member

We concur:

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Douglas E. Henriques, Member

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Edward W. Stuebing, Member